

SENATE BILL 772
EMERGENCY BILL

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2003 Regular Session
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By: **Senators Middleton, Astle, Brinkley, Britt, Brochin, Colburn, Conway, Currie, DeGrange, Della, Dyson, Exum, Forehand, Frosh, Garagiola, Giannetti, Gladden, Green, Greenip, Grosfeld, Hafer, Haines, Harris, Hogan, Hollinger, Hooper, Hughes, Jacobs, Jimeno, Jones, Kasemeyer, Kelley, Kittleman, Klausmeier, Kramer, Lawlah, McFadden, Miller, Mooney, Munson, Pinsky, Pipkin, Ruben, Schrader, Stoltzfus, Stone, and Teitelbaum**

Constitutional Requirements Complied with for Introduction in the last 35 Days of Session

Introduced and read first time: March 19, 2003

Rules suspended

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Health Insurance - Nonprofit Health Service Plans - Reform**

3 FOR the purpose of altering certain provisions relating to the regulation of nonprofit
4 health service plans; specifying the purpose of a certain provision of law;
5 specifying that certain nonprofit health service plans are exempt from certain
6 taxes; establishing the mission of nonprofit health service plans, including any
7 insurer or health maintenance organization wholly owned or controlled by a
8 nonprofit health service plan; requiring a nonprofit health service plan to
9 develop certain goals, objectives, and strategies; exempting certain nonprofit
10 health service plans from certain public service requirements; specifying the
11 manner in which certain nonprofit health service plans can satisfy certain
12 requirements; requiring certain nonprofit health service plans to perform
13 certain functions; providing that a nonprofit health service plan may satisfy a
14 certain requirement in a certain manner; repealing a requirement that the
15 Insurance Commissioner follow certain procedures after making a certain
16 determination; requiring the Insurance Commissioner to issue an order to
17 require that a nonprofit health service plan pay a certain premium tax for a
18 certain period of time under certain circumstances; specifying the use of certain
19 premium tax revenue collected by the Maryland Insurance Administration;
20 specifying information that certain applicants for a certificate of authority must
21 submit; specifying certain criteria that the Insurance Commissioner shall
22 consider when issuing a certain certificate of authority; specifying certain
23 activities in which a certain corporation may engage; specifying that certain
24 members of a certain board of directors are fiduciaries on behalf of certain
25 corporations and their controlled affiliates or subsidiaries; specifying the
26 manner in which certain board members shall act; specifying the principal

1 functions of a certain board; specifying the number and composition of members
2 on a certain board; specifying the manner in which certain board members shall
3 be chosen; requiring a certain board to establish certain committees; specifying
4 the functions of certain committees; specifying the composition of certain
5 committees; specifying that each board member of a certain corporation must
6 serve on at least one standing committee of a certain board; specifying certain
7 actions by the board that require certain board approval; specifying that a
8 certain decision by the board may be rejected by a certain number of board
9 members; requiring a certain board and its standing committees to maintain full
10 and complete board minutes; altering the term of certain board members
11 beginning on a certain date; altering the maximum term of certain board
12 members; limiting the compensation of certain board members; altering the
13 maximum representation of certain individuals on a certain board; specifying
14 that certain fiduciary duties of board members do not create a cause of action
15 against a certain board; specifying when a certain determination by a certain
16 regulating entity is effective; ratifying a certain determination by the Insurance
17 Commissioner; providing for the termination of certain board members and for
18 replacement of those members; requiring the Insurance Commissioner to
19 monitor a nonprofit health service plan's compliance with this Act and to issue a
20 certain report annually; defining a certain term; making this Act an emergency
21 measure; and generally relating to nonprofit health service plans.

22 BY repealing and reenacting, with amendments,
23 Article - Insurance
24 Section 14-101, 14-102, 14-106, 14-107, 14-109 through 14-111, 14-115, and
25 14-504(b)
26 Annotated Code of Maryland
27 (2002 Replacement Volume and 2002 Supplement)

28 BY repealing and reenacting, without amendments,
29 Article - Insurance
30 Section 14-504(a)
31 Annotated Code of Maryland
32 (2002 Replacement Volume and 2002 Supplement)

33 BY repealing and reenacting, with amendments,
34 Article - State Government
35 Section 6.5-203(h)
36 Annotated Code of Maryland
37 (1999 Replacement Volume and 2002 Supplement)

38 Preamble

39 WHEREAS, Maryland's Blue Cross Plan was created by statute in 1937 as a
40 charitable and benevolent organization for the benefit and common good of the
41 community as a whole; and

1 WHEREAS, Maryland's Blue Cross and Blue Shield Plans were consolidated
2 into a single nonprofit corporation in 1985 to create Blue Cross and Blue Shield of
3 Maryland, Inc.; and

4 WHEREAS, Blue Cross and Blue Shield of Maryland, Inc., merged with Group
5 Hospitalization and Medical Services, Inc., in 1997, and CareFirst, Inc., was formed
6 as a holding company; and

7 WHEREAS, In 2000, CareFirst, Inc., entered into an affiliation with BlueCross
8 BlueShield Delaware; and

9 WHEREAS, CareFirst, Inc., is Maryland's Blue Cross Blue Shield Plan; and

10 WHEREAS, CareFirst, as a nonprofit corporation, is a community asset; and

11 WHEREAS, The mission of CareFirst is to provide the most affordable and
12 accessible health insurance to Maryland citizens; and

13 WHEREAS, There is a national crisis of health insurance affordability and
14 accessibility; and

15 WHEREAS, CareFirst is the State's largest health insurer; and

16 WHEREAS, CareFirst has enjoyed significant taxpayer and State-funded
17 exemptions and subsidies to assist in its mission; and

18 WHEREAS, In recent years, CareFirst has exited from several segments of the
19 Maryland health insurance market, including the withdrawal from the
20 Medicare+Choice program and the withdrawal of its subsidiary HMOs, FreeState and
21 Delmarva, from both the individual and small group insurance markets in Maryland,
22 resulting in over 6,000 medically uninsurable individuals; and

23 WHEREAS, Citing a need for increased access to capital, on January 11, 2002,
24 CareFirst filed an application with the Maryland Insurance Commissioner to convert
25 to a for-profit company and to be acquired by a California-based health insurer for
26 \$1.3 billion; and

27 WHEREAS, In 2002, the profits of CareFirst rose 13% to \$104 million, its
28 revenue was \$6.7 billion, and the number of its members increased to 3.24 million;
29 and

30 WHEREAS, On March 5, 2003, after extensive review, the Maryland Insurance
31 Commissioner found that the proposed sale and conversion of CareFirst is not in the
32 public interest; and

33 WHEREAS, The Insurance Commissioner found that the Board of Directors of
34 CareFirst misapprehended, or ignored, its overriding responsibility to the mission of
35 CareFirst and its insureds - to provide coverage at a minimum cost and expense; and

1 WHEREAS, The Insurance Commissioner found that the management of
2 CareFirst did not view their corporate mission as restraining or guiding their
3 business activities; and

4 WHEREAS, The Insurance Commissioner found that the Board of Directors of
5 CareFirst failed to seek and consider material information relevant to the decision to
6 convert, information which an ordinarily prudent person would have sought and
7 considered under the same circumstances, and which would likely have caused a
8 prudent board to reconsider the decision to convert; and

9 WHEREAS, The Insurance Commissioner found that the management of
10 CareFirst insisted on large bonuses and permanent roles in the combined company
11 that conflicted with the interests of CareFirst; and

12 WHEREAS, The Insurance Commissioner found that the decision of the Board
13 of Directors of CareFirst to grant merger incentives was an egregious breach of its
14 duties of care and loyalty and that a key motivation behind the conversion was
15 enrichment of the executives of CareFirst; and

16 WHEREAS, The Insurance Commissioner found that the bidding process for the
17 sale of CareFirst was flawed and did not produce fair market value; and

18 WHEREAS, The Insurance Commissioner found that CareFirst matched or
19 exceeded other nonprofit and for profit insurers on capital spending and that
20 CareFirst has adequate capital to fund its capital investment needs; now, therefore,

21 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
22 MARYLAND, That the Laws of Maryland read as follows:

23 **Article - Insurance**

24 14-101.

25 (a) In this subtitle the following words have the meanings indicated.

26 (b) "Health care provider" means a chiropractor, dentist, hospital, optometrist,
27 pharmacist, physician, podiatrist, or psychologist.

28 (c) "Health care services" means chiropractic, dental, hospital, medical,
29 optometric, pharmaceutical, podiatric, or psychological services.

30 (D) "NONPROFIT HEALTH SERVICE PLAN" INCLUDES AN ENTITY THAT IS
31 ISSUED A CERTIFICATE OF AUTHORITY UNDER THIS SUBTITLE, WHETHER OR NOT
32 THE ENTITY IS ORGANIZED UNDER THE LAWS OF THIS STATE.

33 14-102.

34 (A) THE PURPOSE OF THIS SUBTITLE IS:

1 (1) TO REGULATE THE FORMATION AND OPERATION OF NONPROFIT
2 HEALTH SERVICE PLANS IN THE STATE; AND

3 (2) TO PROMOTE THE FORMATION AND EXISTENCE OF NONPROFIT
4 HEALTH SERVICE PLANS IN THE STATE THAT:

5 (I) ARE COMMITTED TO A NONPROFIT CORPORATE STRUCTURE;

6 (II) SEEK TO PROVIDE INDIVIDUALS, BUSINESSES, AND OTHER
7 GROUPS WITH THE MOST AFFORDABLE AND ACCESSIBLE HEALTH INSURANCE
8 POSSIBLE; AND

9 (III) RECOGNIZE A RESPONSIBILITY TO CONTRIBUTE TO THE
10 IMPROVEMENT OF THE OVERALL HEALTH STATUS OF MARYLAND RESIDENTS.

11 (B) A NONPROFIT HEALTH SERVICE PLAN THAT COMPLIES WITH THE
12 PROVISIONS OF THIS SUBTITLE IS DECLARED TO BE A PUBLIC BENEFIT
13 CORPORATION THAT IS EXEMPT FROM TAXATION AS PROVIDED BY LAW.

14 (C) SUBSECTION (D) OF THIS SECTION APPLIES TO ANY INSURER OR HEALTH
15 MAINTENANCE ORGANIZATION WHOLLY OWNED OR CONTROLLED BY A NONPROFIT
16 HEALTH SERVICE PLAN EVEN IF THE INSURER OR HEALTH MAINTENANCE
17 ORGANIZATION IS ORGANIZED AS A FOR PROFIT ORGANIZATION.

18 (D) THE MISSION OF A NONPROFIT HEALTH SERVICE PLAN SHALL BE TO:

19 (1) PROVIDE AFFORDABLE AND ACCESSIBLE HEALTH INSURANCE TO
20 THE PLAN'S INSURED AND THOSE PERSONS INSURED OR ISSUED HEALTH BENEFIT
21 PLANS BY AFFILIATES OF SUBSIDIARIES OF THE PLAN;

22 (2) ASSIST AND SUPPORT PUBLIC AND PRIVATE HEALTH CARE
23 INITIATIVES FOR INDIVIDUALS WITHOUT HEALTH INSURANCE; AND

24 (3) PROMOTE THE INTEGRATION OF A STATEWIDE HEALTH CARE
25 SYSTEM THAT MEETS THE HEALTH CARE NEEDS OF ALL MARYLAND CITIZENS.

26 (E) A NONPROFIT HEALTH SERVICE PLAN SHALL DEVELOP GOALS,
27 OBJECTIVES, AND STRATEGIES FOR CARRYING OUT ITS STATUTORY MISSION.

28 (F) A corporation without capital stock organized for the purpose of
29 establishing, maintaining, and operating a nonprofit health service plan through
30 which health care providers provide health care services to subscribers to the plan
31 under contracts that entitle each subscriber to certain health care services shall be
32 governed and regulated by:

33 (1) this subtitle;

34 (2) Title 2, Subtitle 2 of this article and §§ 1-206, 3-127, and 12-210 of
35 this article;

36 (3) Title 2, Subtitle 5 of this article;

- 1 (4) §§ 4-113 and 4-114 of this article;
- 2 (5) Title 5, Subtitles 1, 2, 3, 4, and 5 of this article;
- 3 (6) Title 7 of this article, except for § 7-706 and Subtitle 2 of Title 7;
- 4 (7) Title 9, Subtitles 1, 2, and 4 of this article;
- 5 (8) Title 10, Subtitle 1 of this article;
- 6 (9) Title 27 of this article; and
- 7 (10) any other provision of this article that:
- 8 (i) is expressly referred to in this subtitle;
- 9 (ii) expressly refers to this subtitle; or
- 10 (iii) expressly refers to nonprofit health service plans or persons
- 11 subject to this subtitle.

12 14-106.

13 (a) It is the public policy of this State that the exemption from taxation for

14 nonprofit health service plans under § 6-101(b)(1) of this article is granted so that

15 funds which would otherwise be collected by the State and spent for a public purpose

16 shall be used in a like manner and amount by the nonprofit health service plan.

17 (b) This section does not apply to a nonprofit health service plan that insures

18 [fewer than] BETWEEN 1 AND 10,000 covered lives in Maryland OR ISSUES

19 CONTRACTS FOR ONLY ONE OF THE FOLLOWING SERVICES:

- 20 (1) PODIATRIC;
- 21 (2) CHIROPRACTIC;
- 22 (3) PHARMACEUTICAL;
- 23 (4) DENTAL;
- 24 (5) PSYCHOLOGICAL; OR
- 25 (6) OPTOMETRIC.

26 (c) By March 1 of each year or a deadline otherwise imposed by the

27 Commissioner for good cause, each nonprofit health service plan shall file with the

28 Commissioner a premium tax exemption report that:

- 29 (1) is in a form approved by the Commissioner; and

1 (2) demonstrates that the plan has used funds equal to the value of the
2 premium tax exemption provided to the plan under § 6-101(b) of this article, in a
3 manner that serves the public interest in accordance with [subsections (d) and (e) of]
4 this section.

5 (d) [A] TO THE EXTENT THAT THE VALUE OF THE PREMIUM TAX EXEMPTION
6 EXCEEDS ANY REQUIRED CONTRIBUTION TO THE SUBSIDY PROVIDED TO THE
7 SENIOR PRESCRIPTION DRUG PROGRAM ESTABLISHED UNDER TITLE 14, SUBTITLE 5,
8 PART II OF THIS ARTICLE, A nonprofit health service plan may satisfy the public
9 service requirement [in subsection (c)(2)] of this section by establishing that the plan
10 has:

11 (1) increased access to, or the affordability of, one or more health care
12 products or services by offering and selling health care products or services that are
13 not required or provided for by law; [or]

14 (2) PROVIDED FINANCIAL OR IN-KIND SUPPORT FOR PUBLIC HEALTH
15 PROGRAMS;

16 (3) EMPLOYED UNDERWRITING STANDARDS IN A MANNER THAT
17 INCREASES THE AVAILABILITY OF ONE OR MORE HEALTH CARE SERVICES OR
18 HEALTH CARE PRODUCTS;

19 (4) EMPLOYED PRICING POLICIES THAT ENHANCE THE AFFORDABILITY
20 OF HEALTH CARE SERVICES OR HEALTH CARE PRODUCTS AND RESULT IN A HIGHER
21 MEDICAL LOSS RATIO THAN THAT ESTABLISHED BY A COMPARABLE FOR PROFIT
22 HEALTH INSURER; OR

23 [(2)] (5) served the public interest by any method or practice approved
24 by the Commissioner.

25 (e) [(1)] [A] NOTWITHSTANDING SUBSECTION (D) OF THIS SECTION, A
26 nonprofit health service plan that is subject to this section and issues comprehensive
27 health care benefits in the State shall:

28 (1) OFFER HEALTH CARE PRODUCTS IN THE INDIVIDUAL MARKET;

29 (2) OFFER HEALTH CARE PRODUCTS IN THE SMALL EMPLOYER GROUP
30 MARKET IN ACCORDANCE WITH TITLE 15, SUBTITLE 12 OF THIS ARTICLE; AND

31 (3) administer and subsidize the Senior Prescription Drug Program
32 established under Title 14, Subtitle 5, Part II of this title.

33 [(2)] (F) The subsidy required under the Senior Prescription Drug
34 Program may not exceed the value of the nonprofit health service plan's premium tax
35 exemption under § 6-101(b) of this article.

36 [(f)] (G) Each report filed with the Commissioner under subsection (c) of this
37 section is a public record.

1 14-107.

2 (a) By November 1 of each year, the Commissioner shall issue an order
3 notifying each nonprofit health service plan that is required to file a report under §
4 14-106 of this subtitle of whether the plan has satisfied the requirements of § 14-106
5 of this subtitle.

6 (b) [(1)] If the Commissioner determines that a nonprofit health service plan
7 has not satisfied the requirements of § 14-106 of this subtitle, [the nonprofit health
8 service plan shall have 1 year from the date the Commissioner issued the order under
9 subsection (a) of this section to comply with the requirements of § 14-106 of this
10 subtitle.

11 (2) If after the time period provided under paragraph (1) of this
12 subsection the Commissioner determines that a nonprofit health service plan has not
13 satisfied the requirements of § 14-106 of this subtitle:

14 (i) the Commissioner shall report the determination to the House
15 [Economic Matters] HEALTH AND GOVERNMENT OPERATIONS Committee and the
16 Senate Finance Committee, including the reasons for the determination; and

17 (ii) if required by an act of the General Assembly, the nonprofit
18 health service plan shall be subject to] THE COMMISSIONER SHALL ISSUE AN ORDER
19 REQUIRING THE NONPROFIT HEALTH SERVICE PLAN TO PAY the premium tax under
20 Title 6, Subtitle 1 of this article FOR A PERIOD OF TIME BEGINNING WITH THE DATE
21 THE PLAN WAS DETERMINED TO NOT BE IN COMPLIANCE WITH § 14-106 OF THIS
22 SUBTITLE AND UNTIL SUCH TIME AS THE NONPROFIT HEALTH SERVICE PLAN
23 DEMONSTRATES TO THE COMMISSIONER THAT THE PLAN IS COMPLYING WITH §
24 14-106 OF THIS SUBTITLE.

25 (c) A nonprofit health service plan that fails to timely file the report required
26 under § 14-106 of this subtitle shall pay the penalties under § 14-121 of this subtitle.

27 (d) A party aggrieved by an order of the Commissioner issued under this
28 section has a right to a hearing in accordance with §§ 2-210 through 2-215 of this
29 article.

30 (E) PREMIUM TAX REVENUE COLLECTED BY THE ADMINISTRATION AS THE
31 RESULT OF AN ORDER ISSUED UNDER SUBSECTION (B) OF THIS SECTION SHALL BE
32 DEPOSITED INTO THE MARYLAND HEALTH INSURANCE PLAN FUND ESTABLISHED
33 UNDER § 14-504 OF THIS TITLE.

34 14-109.

35 An applicant for a certificate of authority shall:

36 (1) file with the Commissioner an application on the form that the
37 Commissioner provides containing the information that the Commissioner considers
38 necessary;

1 (2) pay to the Commissioner the applicable fee required by § 2-112 of
2 this article; and

3 (3) file with the Commissioner copies of the following documents,
4 certified by at least two of the executive officers of the corporation:

5 (i) articles of incorporation, INCLUDING THE APPLICANT'S
6 CORPORATE MISSION STATEMENT, with all amendments;

7 (ii) bylaws with all amendments;

8 (iii) each contract executed or proposed to be executed by the
9 corporation and a health care provider, embodying the terms under which health care
10 services are to be furnished to subscribers to the plan;

11 (iv) each form of contract issued or proposed to be issued to
12 subscribers to the plan and a table of the rates charged or proposed to be charged to
13 subscribers for each form of contract;

14 (v) a financial statement of the corporation, including the amount
15 of each contribution paid or agreed to be paid to the corporation for working capital,
16 the name of each contributor, and the terms of each contribution;

17 (vi) a list of the names and addresses of and biographical
18 information about the members of the board of directors of the [nonprofit health
19 service plan] CORPORATION; [and]

20 (VII) A LIST OF THE TOTAL COMPENSATION PAID OR PROPOSED TO
21 BE PAID TO EACH OFFICER AND MEMBER OF THE BOARD OF DIRECTORS OF THE
22 CORPORATION;

23 (VIII) A LIST OF THE BEGINNING AND ENDING TERMS OF
24 MEMBERSHIP FOR EACH MEMBER OF THE BOARD OF DIRECTORS OF THE
25 CORPORATION; AND

26 [(vii)] (IX) any other information or documents that the
27 Commissioner considers necessary to ensure compliance with this subtitle.

28 14-110.

29 The Commissioner shall issue a certificate of authority to an applicant if:

30 (1) the applicant has paid the applicable fee required by § 2-112 of this
31 article; and

32 (2) the Commissioner is satisfied:

33 (i) that the applicant has been organized in good faith for the
34 purpose of establishing, maintaining, and operating a nonprofit health service plan
35 THAT:

1
2 STRUCTURE;

1. IS COMMITTED TO A NONPROFIT CORPORATE

3
4 ACCESSIBLE HEALTH INSURANCE POSSIBLE; AND

2. SEEKS TO PROVIDE THE MOST AFFORDABLE AND

5
6 IMPROVEMENT OF THE OVERALL HEALTH STATUS OF MARYLAND RESIDENTS;

3. RECOGNIZES A RESPONSIBILITY TO CONTRIBUTE TO THE

7 (ii) that:

8
9 applicant and a health care provider to furnish health care services to subscribers to
10 the nonprofit health service plan, obligates or, when executed, will obligate each
11 health care provider party to the contract to render the health care services to which
12 each subscriber is entitled under the terms and conditions of the various contracts
13 issued or proposed to be issued by the applicant to subscribers to the plan; and

14
15 chiropractic, psychological, or optometric services, regardless of whether the service is
16 performed by a licensed physician, licensed podiatrist, licensed chiropractor, licensed
17 psychologist, or licensed optometrist;

2. each subscriber is entitled to reimbursement for podiatric,

18 (iii) that:

19
20 subscribers to the plan is in a form approved by the Commissioner; and

1. each contract issued or proposed to be issued to

21
22 of each contract are fair and reasonable;

2. the rates charged or proposed to be charged for each form

23
24 subtitle, of the greater of:

(iv) that the applicant has a surplus, as defined in § 14-117 of this

25
26 1. \$100,000; and

27 subtitle; and

2. an amount equal to that required under § 14-117 of this

28
29 [fewer than] BETWEEN 1 AND 10,000 covered lives in the State, the nonprofit health
30 service plan's corporate headquarters is located in the State.

(v) that, except for a nonprofit health service plan that insures

31 14-111.

32 A certificate of authority issued under this subtitle authorizes a corporation to:

33
34 (1) issue contracts in the form filed with the Commissioner to persons
that become subscribers to the plan;

1 (2) FINANCE CAPITAL IMPROVEMENT PROJECTS THROUGH THE
2 MARYLAND HEALTH AND HIGHER EDUCATIONAL FACILITIES AUTHORITY AS
3 PROVIDED UNDER ARTICLE 43C OF THE CODE, AS APPROVED BY THE COMMISSIONER;

4 (3) FINANCE CAPITAL IMPROVEMENT PROJECTS THROUGH THE
5 MARYLAND ECONOMIC DEVELOPMENT CORPORATION AS PROVIDED UNDER ARTICLE
6 83A, TITLE 5, SUBTITLE 2 OF THE CODE, AS APPROVED BY THE COMMISSIONER; AND

7 (4) PARTNER WITH THE STATE AND OTHER PUBLIC OR PRIVATE
8 ENTITIES TO PROVIDE SERVICES OR ADMINISTER PROGRAMS INTENDED TO
9 ADDRESS COMMUNITY HEALTH CARE NEEDS, AS APPROVED BY THE COMMISSIONER.
10 14-115.

11 (a) (1) In this section the following words have the meanings indicated.

12 (2) "Board" means the board of directors of a nonprofit health service
13 plan.

14 (3) "Immediate family member" means a spouse, child, child's spouse,
15 parent, spouse's parent, sibling, or sibling's spouse.

16 (b) Subsections (c) through [(f)] (H) of this section apply to a nonprofit health
17 service plan that is incorporated under the laws of the State and operates under a
18 certificate of authority issued by the Commissioner under this subtitle.

19 (c) (1) The business and affairs of a nonprofit health service plan shall be
20 managed under the direction of a board of directors.

21 (2) The board and its individual members are fiduciaries and shall act:

22 (i) in good faith;

23 (ii) in a manner that is reasonably believed to be in the best
24 interests of the corporation AND ITS CONTROLLED AFFILIATES OR SUBSIDIARIES
25 THAT OFFER HEALTH BENEFIT PLANS; [and]

26 (III) IN A MANNER THAT IS REASONABLY BELIEVED TO BE IN
27 FURTHERANCE OF THE CORPORATION'S NONPROFIT MISSION; AND

28 [(iii)] (IV) with the care that an ordinarily prudent person in a like
29 position would use under similar circumstances.

30 (3) THE PRINCIPAL FUNCTIONS OF THE BOARD SHALL INCLUDE:

31 (I) ENSURING THAT THE CORPORATION EFFECTIVELY CARRIES
32 OUT THE NONPROFIT MISSION ESTABLISHED UNDER § 14-102(C) OF THIS SUBTITLE;

33 (II) SELECTING AND EVALUATING THE PERFORMANCE OF
34 CORPORATE MANAGEMENT;

1 (III) ENSURING TO THE EXTENT PRACTICABLE THAT HUMAN
2 RESOURCES AND OTHER RESOURCES ARE SUFFICIENT TO MEET CORPORATE
3 OBJECTIVES;

4 (IV) NOMINATING AND SELECTING SUITABLE CANDIDATES FOR
5 THE BOARD; AND

6 (V) ESTABLISHING A SYSTEM OF GOVERNANCE AT THE BOARD
7 LEVEL, INCLUDING EVALUATION OF BOARD PERFORMANCE.

8 (4) EACH MEMBER OF THE BOARD SHALL DEMONSTRATE A
9 COMMITMENT TO THE MISSION OF THE NONPROFIT HEALTH SERVICE PLAN.

10 [(3)] (5) An officer or employee of a nonprofit health service plan or any
11 of its affiliates or subsidiaries may not be appointed or elected to the board.

12 [(4)] (6) A nonprofit health service plan is subject to the provisions of §
13 2-419 of the Corporations and Associations Article.

14 (d) (1) THIS SUBSECTION APPLIES TO A CORPORATION THAT:

15 (I) IS ISSUED A CERTIFICATE OF AUTHORITY AS A NONPROFIT
16 HEALTH SERVICE PLAN; AND

17 (II) IS THE SOLE MEMBER OF A CORPORATION ISSUED A
18 CERTIFICATE OF AUTHORITY AS A NONPROFIT HEALTH SERVICE PLAN.

19 (2) This subsection does not apply to a board of a nonprofit health service
20 plan that INSURES BETWEEN 1 AND 10,000 COVERED LIVES IN MARYLAND OR issues
21 contracts for only one of the following services:

22 (i) podiatric;

23 (ii) chiropractic;

24 (iii) pharmaceutical;

25 (iv) dental;

26 (v) psychological; or

27 (vi) optometric.

28 (3) (I) THE BOARD OF DIRECTORS OF A NONPROFIT HEALTH SERVICE
29 PLAN SUBJECT TO THIS SECTION SHALL HAVE NO MORE THAN 21 MEMBERS.

30 (II) OF THE 21 MEMBERS OF THE BOARD:

31 1. ONE SHALL BE APPOINTED BY THE PRESIDENT OF THE
32 SENATE;

1 (II) EACH STANDING COMMITTEE SHALL HAVE REPRESENTATIVES
2 FROM EACH CORPORATION FOR WHICH THE NONPROFIT HEALTH SERVICE PLAN IS
3 THE SOLE MEMBER.

4 (III) THE COMPENSATION COMMITTEE AND THE NOMINATING
5 COMMITTEE SHALL EACH INCLUDE EITHER THE APPOINTEE OF THE PRESIDENT OF
6 THE SENATE OR THE SPEAKER OF THE HOUSE.

7 (IV) EACH BOARD MEMBER SHALL SERVE ON AT LEAST ONE
8 STANDING COMMITTEE.

9 (V) 1. THE CHAIRMAN OF THE BOARD SHALL SELECT A
10 CHAIRMAN FOR EACH BOARD COMMITTEE.

11 2. A COMMITTEE CHAIRMAN SHALL SERVE NO MORE THAN 2
12 CONSECUTIVE YEARS.

13 (9) (I) THE FOLLOWING ACTIONS BY A NONPROFIT HEALTH SERVICE
14 PLAN, OR A CORPORATION FOR WHICH THE NONPROFIT HEALTH SERVICE PLAN IS
15 THE SOLE MEMBER, SHALL BE APPROVED BY THE BOARD:

16 1. A MODIFICATION TO BENEFIT LEVELS;

17 2. A MODIFICATION TO PROVIDER NETWORKS OR PROVIDER
18 REIMBURSEMENT;

19 3. A MODIFICATION OF UNDERWRITING GUIDELINES;

20 4. A MODIFICATION OF RATES OR RATING PLANS;

21 5. THE WITHDRAWAL OF A PRODUCT FROM A LINE OR TYPE
22 OF BUSINESS OR GEOGRAPHIC REGION; AND

23 6. ANY OTHER ACTION THAT COULD IMPACT THE
24 AVAILABILITY AND AFFORDABILITY OF HEALTH CARE IN THE STATE.

25 (II) A DECISION BY THE BOARD TO CONVERT TO A PROFIT ENTITY
26 UNDER TITLE 6.5 OF THE STATE GOVERNMENT ARTICLE MAY BE REJECTED BY ANY
27 THREE MEMBERS OF THE BOARD.

28 (10) THE BOARD AND ITS STANDING COMMITTEES SHALL MAINTAIN
29 FULL AND COMPLETE MINUTES OF ALL BOARD AND COMMITTEE MEETINGS AND
30 DELIBERATIONS.

31 (e) (1) This subsection does not apply to a NONPROFIT HEALTH SERVICE
32 PLAN THAT INSURES BETWEEN 1 AND 10,000 COVERED LIVES IN MARYLAND OR A
33 board that has fewer than three authorized members.

34 (2) The term of a member is [3] 2 years.

1 (3) The terms of the members of a board shall be staggered over a
2 [3-year] 2-YEAR period as required by the terms provided for members of the board
3 in the bylaws filed and approved by the Commissioner on or after June 1, [1993]
4 2003.

5 (4) At the end of a term, a member continues to serve until a successor is
6 appointed and qualifies.

7 (5) A member who is appointed after a term has begun serves only for
8 the rest of the term and until a successor is appointed and qualifies.

9 (6) A member may not serve for more than:

10 (i) three full terms; or

11 (ii) a total of more than [9] 6 years.

12 (7) A person may not be a member of the board if the person:

13 (i) has defaulted on the payment of a monetary obligation to the
14 nonprofit health service plan;

15 (ii) has been convicted of a criminal offense involving dishonesty or
16 breach of trust or a felony; or

17 (iii) habitually has neglected to pay debts.

18 (8) A member shall meet any other qualifications set forth in the bylaws
19 of the nonprofit health service plan.

20 (9) A member may not be an immediate family member of another board
21 member or an officer or employee of the nonprofit health service plan.

22 (10) The board shall elect a chairman from among its members.

23 (11) The [membership] COMPOSITION of the board shall represent the
24 [different] RACIAL, GENDER, AND geographic [regions] DIVERSITY of the State.

25 (f) The board shall notify the Commissioner of any member who attends less
26 than 65% of the meetings of the board during a period of 12 consecutive months.

27 [(g) (1) This subsection does not apply to a board of a nonprofit health service
28 plan that has a premium income for the preceding year of less than \$30,000,000.

29 (2) No more than 25% of a board may be:

30 (i) licensed health care professionals;

31 (ii) hospital administrators; and

32 (iii) employees of health care professionals or hospitals.

1 (3) The Commissioner may adopt regulations that limit the
2 representation of licensed health care professionals, hospital administrators, and
3 employees of health care professionals or hospitals on a subcommittee of the board in
4 accordance with paragraph (2) of this subsection.]

5 (G) (1) EXCLUDING REIMBURSEMENT FOR ORDINARY AND NECESSARY
6 TRAVEL EXPENSES INCURRED AS A RESULT OF SERVING ON THE BOARD, A DIRECTOR
7 OF A CORPORATION SUBJECT TO THIS SECTION MAY NOT RECEIVE TOTAL
8 COMPENSATION IN EXCESS OF \$10,000 ANNUALLY FOR SERVING ON THE BOARD.

9 (2) A MEMBER MAY NOT RECEIVE MORE THAN THE AMOUNT SPECIFIED
10 IN PARAGRAPH (1) OF THIS SUBSECTION FOR SERVING ON MORE THAN ONE BOARD
11 OF A CORPORATION SUBJECT TO THIS SECTION.

12 14-504.

13 (a) (1) There is a Maryland Health Insurance Plan Fund.

14 (2) The Fund is a special nonlapsing fund that is not subject to § 7-302 of
15 the State Finance and Procurement Article.

16 (3) The Treasurer shall separately hold and the Comptroller shall
17 account for the Fund.

18 (4) The Fund shall be invested and reinvested at the direction of the
19 Board in a manner that is consistent with the requirements of Title 5, Subtitle 6 of
20 this article.

21 (5) Any investment earnings shall be retained to the credit of the Fund.

22 (6) On an annual basis, the Fund shall be subject to an independent
23 actuarial review setting forth an opinion relating to reserves and related actuarial
24 items held in support of policies and contracts.

25 (7) The Fund shall be used only to provide funding for the purposes
26 authorized under this subtitle.

27 (b) The Fund shall consist of:

28 (1) premiums for coverage that the Plan issues;

29 (2) premiums paid by enrollees of the Senior Prescription Drug Program;

30 (3) money collected in accordance with § 19-219 of the Health - General
31 Article;

32 (4) money deposited by a carrier in accordance with § 14-513 of this
33 subtitle;

34 (5) income from investments that the Board makes or authorizes on
35 behalf of the Fund;

- 1 (6) interest on deposits or investments of money from the Fund; [and]
2 (7) PREMIUM TAX REVENUE COLLECTED UNDER § 14-107 OF THIS TITLE;
3 AND
4 [(7)] (8) money collected by the Board as a result of legal or other actions
5 taken by the Board on behalf of the Fund.

6 **Article - State Government**

7 6.5-203.

8 (h) A determination made by the appropriate regulating entity under
9 subsection (f) of this section may not take effect until 90 calendar days after the date
10 the determination is made OR WHEN RATIFIED OR REJECTED BY THE GENERAL
11 ASSEMBLY, WHICHEVER IS EARLIER.

12 SECTION 2. AND BE IT FURTHER ENACTED, That pursuant to §
13 6.5-203(h) of the State Government Article as enacted by Section 1 of this Act, the
14 General Assembly of Maryland ratifies the determination of the Insurance
15 Commissioner, and for the reasons set forth in MIA Case No. 2003-02-032, finds that
16 the conversion of CareFirst to a for profit entity is not in the public interest, and
17 declares that it is in the interest of all Marylanders to protect and preserve CareFirst
18 in its nonprofit form.

19 SECTION 3. AND BE IT FURTHER ENACTED, That any person who is a
20 member of the board of directors of a nonprofit health service plan that is subject to
21 the provisions of § 14-115(d) of the Insurance Article as enacted by Section 1 of this
22 Act on the effective date of this Act:

23 (a) whose term as a director has exceeded the 9-year statutory term limit
24 applicable to a nonprofit health service plan shall be removed from the board
25 immediately; and

26 (b) whose term expires in December 2003 shall be removed no later than
27 December 31, 2003.

28 SECTION 4. AND BE IT FURTHER ENACTED, That:

29 (a) Notwithstanding the provisions of § 14-115(d)(3)(ii)3 of the Insurance
30 Article as enacted by Section 1 of this Act, to fill the vacancies resulting under Section
31 3(1) of this Act, members of the board who shall begin serving on the effective date of
32 this Act shall be appointed as follows:

33 (1) one member appointed by the President of the Senate;

34 (2) one member appointed by the Speaker of the House;

35 (3) three members appointed by the Governor as follows:

- 1 (i) one member representing the Maryland Hospital Association;
- 2 (ii) one member representing small business interests; and
- 3 (iii) one consumer member, who is the officer of an insurer, that is
4 not a health insurer, organized under the laws of the State and who is subject to the
5 provisions of § 14-115(d)(5) and (6) of the Insurance Article as enacted by Section 1 of
6 this Act; and
- 7 (4) three members appointed by the board, subject to § 14-115(d)(8)(i)4
8 of the Insurance Article as enacted by Section 1 of this Act.

9 (b) Notwithstanding the provisions of § 14-115(d)(3)(ii)3 of the Insurance
10 Article as enacted by Section 1 of this Act, to fill the vacancies resulting under Section
11 3(2) of this Act, members of the board shall be appointed as follows:

- 12 (1) three members appointed by the Governor as follows:
- 13 (i) one member representing the Maryland Medical and
14 Chirurgical Society;
- 15 (ii) one member representing organized labor; and
- 16 (iii) one consumer member who is subject to the provisions of §
17 14-115(d)(5) and (6) of the Insurance Article as enacted by Section 1 of this Act; and
- 18 (2) ten members appointed by the board, subject to § 14-115(d)(8)(i)4 of
19 the Insurance Article as enacted by Section 1 of this Act.

20 (c) All members appointed under subsections (a) and (b) of this section shall
21 have prior experience serving as a trustee or director of a corporation.

22 (d) When the terms of the board members appointed under subsections (a) and
23 (b) of this section expire as provided under § 14-115(e) of the Insurance Article as
24 enacted by Section 1 of this Act, the vacancies shall be filled in accordance with §
25 14-115(d)(3) of the Insurance Article as enacted by Section 1 of this Act.

26 SECTION 5. AND BE IT FURTHER ENACTED, That, on or before February
27 1, 2004 and annually thereafter, the Insurance Commissioner shall submit an annual
28 report to the Governor and, subject to § 2-1246 of the State Government Article, the
29 Senate Finance Committee and the House Health and Government Operations
30 Committee on the efforts of a corporation subject to § 14-115(d) of the Insurance
31 Article as enacted by Section 1 of this Act to comply with the provisions of this Act.

32 SECTION 6. AND BE IT FURTHER ENACTED, That this Act is an
33 emergency measure, is necessary for the immediate preservation of the public health
34 or safety, has been passed by a yea and nay vote supported by three-fifths of all the
35 members elected to each of the two Houses of the General Assembly, and shall take
36 effect from the date it is enacted.